Tai Siat Fah & Ors v Lawful Personal Representative of Badrul Hisham bin Hashim

HIGH COURT (JOHOR BAHRU) — CIVIL APPEAL NO 12-24 OF 1993
ABDUL MALIK ISHAK J
20 FEBRUARY 1995

Civil Law Act *— Damages — Fatal accident — Dependant compensated under Workmen's Compensation Act 1952 — Whether could still make dependency claim under Civil Law Act 1956 — Civil Law Act 1956 ss 7 & 7(3A) — Workmen's Compensation Act 1952 s 20(a)*

Statutory Interpretation *— Construction of statutes — Statutory language clear and unequivocal — Plain meaning of provisions must be given effect to — Civil Law Act 1956 ss 7 & 7(3A) — Workmen's Compensation Act 1952 s 20(a)*

A widow, whose husband died in a fatal road accident ('the appellant'), had filed a dependency claim in the sessions court under s 7 of the Civil Law Act 1956 ('the CLA'), in respect of loss of support and damages for bereavement under s 7(3A). A preliminary objection was raised by the insurer of the deceased defendant's car ('the company') that pursuant to s 20(a) of the Workmen's Compensation Act 1952 ('the WCA'), the appellant could not make a claim against it after she had already received compensation under the WCA. Furthermore, it was argued, both actions under the CLA and the WCA concerned the same subject matter. The sessions court gave its decision in favour of the company. The appellant has appealed.

Held, allowing the appeal:

(1) In interpreting the relevant provisions of the WCA and the CLA, the court was constrained to enforce and adhere to the meaning therein, no matter how harsh the result may be, as the statutory language employed was clear and unequivocal.

(2) Applying this rule of interpretation, it was clear that s 20(a) of the WCA contains no definite injunctive stricture which prohibited the appellant from claiming under the CLA after receiving compensation under WCA. This was unlike the contraints contained in ss 31 and 42 of the Employees' Social Security Act 1969.

(3) Section 7(3)(i)(d) of the CLA in its plain language provides that any sum which has been paid under any written law relating to any compensation shall not be taken into account in assessing damages. Hence, it was clear that the compensation paid to the appellant under the WCA would not bar a dependency claim under s 7 of the CLA, in respect of loss of support and damages for bereavement under s 7(3A) of the CLA, nor was such compensation deductible.

[Bahasa Malaysia summary

Seorang balu, yang suaminya telah meninggal dunia di dalam suatu kemalangan jalan raya yang membawa padah ('perayu'), telah memfailkan suatu tuntutan kehilangan tanggungan di mahkamah sesyen di bawah s 7 Akta Undang-Undang Sivil 1956 ('AUS'), untuk kehilangan mata pencarian serta ganti rugi akibat kematian suaminya, di bawah s 7(3A). Suatu bantahan permulaan telah dibangkitkan oleh penanggung insurans motokar defendan yang telah meninggal dunia ('syarikat itu') bahawa menurut s 20(a) Akta Pampasan Pekerja 1952 ('APP'), perayu tidak boleh membuat tuntutan terhadapnya, selepas beliau telah menerima pampasan di bawah APP. Lagipun, adalah dihujahkan bahawa kedua-dua tindakan di bawah AUS dan APP adalah berkenaan dengan perkara yang sama. Mahkamah sesyen memberikan keputusan yang memihak kepada syarikat itu. Perayu telah membuat rayuan.

Diputuskan, membenarkan rayuan itu:

(1) Dalam pentafsiran peruntukan APP dan AUS yang berkenaan, mahkamah terpaksa menguatkuasakan dan mematuhi makna peruntukan tersebut, tidak kira betapa teruk akibatnya, kerana bahasa statutori yang digunakan di dalam peruntukan tersebut adalah jelas dan tidak taksa.

(2) Dengan menggunakan rukun pentafsiran ini, adalah jelas bahawa s 20(a) APP tidak mengandungi sekatan injunktif yang tetap, yang menghalang perayu daripada menuntut di bawah AUS, selepas beliau menerima pampasan di bawah APP. Ini adalah tidak serupa dengan sekatan yang terkandung di dalam ss 31 dan 42 Akta Keselamatan Sosial Pekerja 1969.

(3) Seksyen 7(3)(i)(d) APP menyatakan dengan bahasanya yang jelas bahawa sebarang jumlah yang telah dibayar di bawah apa-apa undang-undang bertulis berkenaan dengan sebarang pampasan tidak diambil kira dalam pentaksiran ganti rugi. Dengan demikian, adalah jelas bahawa pampasan yang dibayar kepada perayu di bawah APP tidak akan menghalang suatu tuntutan kehilangan tanggungan di bawah s 7 AUS, mengenai kehilangan mata pencarian dan ganti rugi untuk kematian suaminya di bawah s 7(3A) AUS, dan pampasan tersebut juga tidak boleh ditolak.]

Notes

For cases on damages awarded in fatal accidents under the Civil Law Act, see 1 *Mallal's Digest* (4th Ed) paras 1791–1817; [1992] Mallal's Digest 146.

For cases on the construction of statutes, see 11 *Mallal's Digest* (4th Ed) paras 1308–1368; [1990] Mallal's Digest 1166; [1991] Mallal's Digest 1910; [1992] Mallal's Digest 1613–1624; [1993] Mallal's Digest 1250–1257.

Cases referred to

Azimah bte Ismail & Ors v Chang Ng Pang & Ors [1985] 2 MLJ 152 (refd)
Cartledge v E Jopling & Sons Ltd [1963] AC 758; [1963] 1 All ER 341; [1963] 3 WLR 210 (folld)
Chin Choy & Ors v Collector of Stamp Duties [1979] 1 MLJ 69 (refd)
Goh Ya Tian v Tan Song Gou & Ors [1981] 2 MLJ 317 (folld)
Kahu Illias v NV Vereenigde Nederlandsche Scheepvaartmaatschappij [1961] MLJ 275 (distd)
Koay Tuan & Anor v Eng Chong How & Anor [1987] 1 MLJ 422 (distd)
Low Swee Fong v Gammon (Malaya) 1959 Ltd [1962] MLJ 295 (distd)
R v Ramsgate (Inhabitants) (1827) 6 B & C 712 (folld)
Stock v Frank Jones (Tipton) Ltd [1978] 1 All ER 948; [1978] 1 WLR 231 (folld)
Sutters v Briggs [1922] 1 AC 1 (folld)
Ward v Malaysian Airlines System Bhd [1991] 3 MLJ 317 (folld)
Yap Choo Hoo v Tahir bin Yasin & Anor [1970] 2 MLJ 138 (folld)

Legislation referred to

Civil Law Act 1956 ss 7, 7(3A), (3)(i)(d), (5), 28A(1)(a)
Employees' Social Security Act 1969 ss 15(1)(c), 31, 42
Road Transport Act 1987 s 96
Stamp Ordinance 1949 s 12A
Workmen's Compensation Act ss 8(a), 20(a), 27(2), 27(3), 28
Workmen's Compensation Ordinance (Cap 157) ss 20, 29(a) [Sing]

RK Nathan (*RK Nathan & Co*) for the appellants.
Ibrahim Hashim (*Hassan Ibrahim & Co*) for the respondent.

Abdul Malik Ishak J: The first appellant/plaintiff, the widow of the deceased (Chang Keng Looy) filed a dependency claim under s 7 of the Civil Law Act 1956 (' the CLA'), in respect of loss of support and damages for bereavement under s 7(3A) of the CLA for herself and as next friend of her four minor children in the Sessions Court, Johor Bahru ('the sessions court'), arising out of a fatal road accident between motor lorry No JV 8975 driven by the deceased, and a motor car No JAW 9233 driven by Badrul Hisham bin Hashim (also deceased) in the opposite direction.

A preliminary objection was raised (by counsel acting for the insurance) before the sessions court, which gave its decision in favour of the respondent/defendant. This appeal is only concerned with that preliminary objection.

The preliminary objection is pleaded and set out clearly in para 6 of the amended statement of defence and it is in the following terms:

> Jika sekiranya penghakiman diberikan kepada plaintif [appellants here], pihak defendan [respondent here] secara alternatif akan meminta mahkamah

> tolakan (set off) sebanyak RM14,400 yang telah dibayar kepada tanggungan pihak plaintif [appellants here] dan/atau akan tuntut balas jumlah tersebut.

In reply, the appellants/plaintiffs filed, at para 4 of their reply to the amended statement of defence, a curt reply to the following effect:

> Mengikut s 7(3)(i)(d) Akta Undang Undang Sivil 1956, defendan [respondent here] adalah dihalang daripada tolakan (set-off) sebanyak RM14,400 yang mana telah dibayar melalui pampasan.

In a nutshell, the preliminary objection can be summarized as follows: the appellants/plaintiffs as dependants having received compensation under the Workmen's Compensation Act 1952 ('the WCA'), should be barred from making another claim under the CLA.

It is evident from the agreed supplementary bundle, that the appellants/plaintiffs received RM14,400, being the maximum amount, as compensation under s 8(a) of the WCA. Dato' RK Nathan for the appellants/plaintiffs sought to argue that the respondent/defendant should call the labour officer to prove that such compensation was made but, with respect, he was in error there. The authorities show that once a document forms part of an agreed bundle of documents, it stood automatically proved as to its existence, due execution and contents without having to be proved, and that no evidence needed or had to be produced to formally put in the document in question. Put simply, agreed documents are receivable in evidence (*Yap Choo Hoo v Tahir bin Yasin & Anor* [1970] 2 MLJ 138 and *Goh Ya Tian v Tan Song Gou & Ors* [1981] 2 MLJ 317).

The appellants/plaintiffs argued through Dato' RK Nathan that compensation under the WCA should not be a bar to claims for dependency in respect of loss of support and damages for bereavement under the CLA. An attempt was made to differentiate *Koay Tuan & Anor v Eng Chong How & Anor* [1987] 1 MLJ 422 with the facts of the present appeal. In *Koay Tuan*'s case, the award of general damages in respect of a dependency claim under s 7 of the CLA, being intended to compensate the dependants of the deceased in respect of loss of support was said to be similar to "dependants' benefit" within the meaning of s 15(1)(c) of the Employees' Social Security Act 1969 ('Socso Act') and, consequently, it was also caught within the meaning of s 42 of the Socso Act. It was further pressed before me that *Koay Tuan*'s case rested on the interpretation of the Socso Act, in particular s 42 thereof and that the deceased there was insured under Socso by his employer unlike the deceased in the present appeal. Section 42 of the Socso Act reads thus:

> When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other written law.

In delivering the judgment of *Koay Tuan*'s case, Edgar Joseph Jr J (as he then was) said at p 424:

> The words 'similar benefit' in s 42 of the Act must mean a benefit similar in kind. There is authority for saying that the expression 'of a kind similar to' means similar in the purpose for which it is used (*Jewish Blind Society v*

Henning [1961] 1 All ER 47; *Walker v Wood* [1962] 3 All ER 188 at p 190). By the same token, both categories of payment are intended for the benefit of dependants of the deceased.

On the other end of the scale, Encik Ibrahim Hashim for the respondent/defendant urged me to draw a parallel with *Koay Tuan*'s case to the facts of the present appeal, even though the appellants/plaintiffs here received compensation under the WCA and not under the Socso Act. He urged me to conclude that the appellants/plaintiffs here should be barred from claiming under the CLA, and that the decision of the sessions court on the preliminary point should be upheld.

Encik Ibrahim Hashim further advanced an argument that under s 20(a) of the WCA, a workman is not entitled to recover both damages and compensation, and the use of the words therein like 'shall not be entitled to recover both damages and compensation' meant that an option must be made — either to proceed to recover damages or compensation. Both remedies are not available to the workman. He cited and relied upon *Chin Choy & Ors v Collector of Stamp Duties* [1979] 1 MLJ 69, where Chang Min Tat FJ (as he then was) in delivering the judgment of the Federal Court held that there was no ambiguity whatsoever in the words and meaning of s 12A of the Stamp Ordinance 1949, and the Collector of Stamp Duties was therefore justified, where he has reason to believe that the consideration mentioned in the transfer did not reflect the proper market value at the date of the execution of the transfer, in imposing the duty on what he properly and reasonably considered to be the market value of the property at the date of the execution of the transfer. Likewise, so submitted Encik Ibrahim Hashim there is no ambiguity in s 20(a) of the WCA and effect should be given to it.

Next, the case of *Kahu Illias v NV Vereenigde Nederlandsche Scheepvaartmaatschappij* [1961] MLJ 275 was referred to, and Encik Ibrahim Hashim narrated the facts; and briefly the facts were as follows: the plaintiff, a stevedore employed by the Singapore Harbour Board, was seriously injured when some bales of rubber fell on him while he was working in the hold of the defendants' vessel. He accepted and received $12,780 as compensation from his employers under the Workmen's Compensation Ordinance (Cap 157) in full settlement of his claim. He then commenced proceedings against the owners of the vessel in which the accident occurred. The main point for consideration before the Singapore court was whether the plaintiff had recovered compensation from his employer within the meaning of s 29(a) of the Singapore Workmen's Compensation Ordinance (Cap 157). Buttrose J, in a short judgment, held that as the payment by the Singapore Harbour Board and the acceptance by the plaintiff were entirely unqualified and unconditional, the plaintiff could not later recover damages from the defendants. Though on the facts, *Kahu Illias* are poles apart from the present appeal, yet Encik Ibrahim Hashim sought to apply by analogy and implore this court to hold the same views as Buttrose J did in that case. Here, the appellants/plaintiffs having received the compensation under the WCA, filed an action against the insurance for damages not under the WCA, but under the CLA and,

without a doubt, this is the distinguishing feature in the present appeal — different from that of *Kahu Illias*.

In *Low Swee Fong v Gammon (Malaya) 1959 Ltd* [1962] MLJ 295, Wee Chong Jin J (as he then was) construed per incuriam the word 'recover' in s 20 of the Singapore Workmen's Compensation Ordinance (Cap 157) to mean recover as a whole and not in part and, applying this case, Encik Ibrahim Hashim submitted that the appellants/plaintiffs in the present appeal had received the full maximum compensation under the WCA and should, consequently, be barred from claiming under the CLA. But in *Low Swee Fong*'s case, the court there held that there was no evidence that the moneys the plaintiff purportedly received from his employer were received by him as workmen's compensation payments.

It was further argued that the sessions court had to consider s 7(5) of the CLA and interpret it accordingly. For convenience, s 7(5) of the CLA enacts as follows:

> Not more than one action shall be brought for and in respect of the same subject matter of complaint, and every such action shall be brought within three years after the death of the person deceased.

Encik Ibrahim Hashim submitted that the word 'action' in s 7(5) of the CLA was not defined in the Act, and he drew the court's attention to *Mozley and Whiteley's Law Dictionary* (9th Ed) by John B Saunder Esq, where the word 'action' was defined as:

> The lawful demand of one's right. It is defined by Justinian, jus prosequendi in judicio quod alicui debetur, a right of prosecuting, in a judicial proceeding, that which is due to anyone. Now generally used to denote the actual pursuit of this right, or the means of its exercise. In this view, ie with reference to the right enforced or redress obtained, actions are divided into civil and penal, and also into real, personal, and mixed. (Actions civil and penal; actions mixed; actions real and personal),

and he argued (as I understood him), that both the actions under the WCA and the CLA relate to the same subject matter, and the sessions court had correctly appraised the situation and concluded that there was merit to the preliminary objection and, consequently, gave its decision in favour of the respondent/defendant.

The sessions court distinguished *Azimah bte Ismail & Ors v Chang Ng Pang & Ors* [1985] 2 MLJ 152 from the present appeal strictly on the facts. In *Azimah*'s case, there was no evidence that the widow had applied to settle any question under s 27(2) of the WCA, and the preliminary enquiry there was held under s 27(3) of the same Act. Again, the memorandum of agreement signed between the widow and the fourth defendant was never recorded under s 28 of the same Act. Consequently, the court in that case held that the deposit of the workmen's compensation could not be said to be such damages recovered in any court. Put shortly, in *Azimah*'s case, there was no evidence before the court there that compensation was paid and received, unlike the present appeal where there was ample evidence that the appellants/plaintiffs had received the maximum compensation under the WCA.

In considering the preliminary point raised in this appeal, I have taken into account the relevant provisions of the WCA, the CLA and also the Socso Act. I am constrained to say that from the language employed in these provisions couched in clear and unequivocal terms, tantamount and capable of only one meaning, that meaning must be adhered and enforced therein, no matter how harsh the result may be (see *Cartledge v E Jopling & Sons Ltd* [1963] AC 758; [1963] 1 All ER 341; [1963] 3 WLR 210). Yet, another basic principle in the interpretation of statutes would be this. First, to apply the words and phrases of a statute in their ordinary meaning; and secondly, to construe the phrases and sentences according to the rules of grammar. As Bayley J rightly stated in *R v Ramsgate (Inhabitants)* (1827) 6 B & C 712, 'It is very desirable in all cases to adhere to the words of an Act of Parliament, giving to them that sense which is their natural import in the order in which they are placed.'

In the present appeal, Encik Ibrahim Hashim represented the third party, namely the insurance company. It is his case and as part of his submission, he relied heavily on s 20(a) of the WCA to bring home the point that the plain and unambiguous meaning to that section would bar the appellants/plaintiffs from claiming under the CLA after being compensated under the WCA. Put in a nutshell and for fear of repetition, he submitted that the appellants/plaintiffs had an option of whether the claim under the WCA or under the CLA, and the appellants/plaintiffs could not exercise both options at any one time. He failed to take into account when relying on *Koay Tuan*'s case that the definite injunctive strictures in s 31 of the Socso Act are absent in s 20(a) of the WCA. The injunctive constraints in s 31 of the Socso Act are as follows:

> An insured person or his dependants shall not be entitled to receive or recover from the employer of the insured person —
>
> (i) any compensation under the Workmen's Compensation Ordinance 1952, or
>
> (ii) damages under any other law for the time being in force, in respect of an employment injury sustained as an employee under this Act.

To add insult to injury, s 42 of the Socso Act contains a further impediment, and it is as follows:

> When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other written law.

In sharp contrast is s 20 of the WCA, where it is stated that:

> Where any injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof —
>
> (a) the workman may take proceedings against that person to recover damages and may claim against any person liable to pay compensation under this Act, but he shall not be entitled to recover both damages and compensation; and
>
> (b) if the workman has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called upon to pay an indemnity under section 19(2) shall be entitled

> to be indemnified by the person so liable to pay damages as aforesaid and all questions as to the right to and amount of any such indemnity may, in default of agreement, be settled by an Arbitrator.

It is now crystal clear that like Encik Ibrahim Hashim, the sessions court too fell in error, in blindly following *Koay Tuan*'s case without taking into consideration and weighing on a balance the constraints in ss 31 and 42 of the Socso Act when construing the WCA.

Dato' RK Nathan submitted that the appellants/plaintiffs had to take an insurance, more in the nature of a compulsory insurance under s 96 of the Road Transport Act 1987. He referred to and relied heavily on the recent decision of the then Supreme Court in *Ward v Malaysian Airlines System Bhd* [1991] 3 MLJ 317, where the appellant, an Australian national who was employed by the respondents as a pilot, suffered a head injury and other minor injuries as a result of an emergency crash landing of the aircraft he was piloting in Sarawak. Liability for damages was admitted, and the trial court had to decide on the issue of the quantum of damages. After the trial court assessed damages for the appellant in the total sum of RM301,250, the trial court then proceeded to deduct from that total sum, a sum of RM300,000 which the appellant had received from an insurance company under a general accident policy taken by the respondents for the benefit of the appellant and other employees under the terms of their contract of employment, leaving a paltry judgment sum of only RM1,250. Mohamed Azmi SCJ (as he then was), delivering the judgment of the then Supreme Court had this to say [at p 321]:

> To put the issue of deductibility beyond doubt in the present appeal, our Parliament has, fortunately for the appellant, introduced s 28A(1)(a) by Act A308 which came into force on 30 May 1975. The intervention of the new provision goes beyond introducing mere compromise solution against deductibility. We agree with Mr RK Nathan that the plain meaning of the words used in that section should be adopted for the purpose of interpretation. Adopting the strict rule of interpretation, our Parliament in its wisdom has made it crystal clear that any sum paid or payable in respect of personal injury which does not result in death 'under any contract of assurance or insurance' shall not be taken into account in assessing damages. By providing no exception, the effect would be to eliminate altogether deductibility even in borderline situations although the injured person has not directly contributed to the insurance scheme.
>
> For the above reasons, it is our opinion that having regard to the nature of the scheme of the policy, the insurance benefits in this case are not deductible both under s 28A(1)(a) and the common law itself.

Incidentally, s 28A(1)(a) of the CLA reads thus:

> In assessing damages recoverable in respect of the personal injury which does not result in death, there shall not be taken into account —
>
> (a) any sum paid or payable in respect of personal injury under any contract of assurance or insurance, whether made before or after the coming into force of this Act;

Applying *Ward*'s case to the present appeal, the compensation paid to the appellants/plaintiffs are not deductible, and they are caught under proviso

(i)(d) of s 7(3)of the CLA, which clearly laid down that any sum which has been paid under any written law relating to the payment of any compensation shall not be taken into account in assessing damages. The approach I have taken in interpreting the CLA is by applying to the fore what Viscount Birkenhead LC said in *Sutters v Briggs* [1922] 1 AC 1 at p 8:

> The consequences of this view will no doubt be extremely inconvenient to many persons. But this is not a matter proper to influence the House unless in a doubtful case affording foothold for balanced speculations as to the probable intention of the Legislature. Where, as here, the legal issues are not open to serious doubt our duty is to express a decision and leave the remedy (if one be resolved upon) to others.

In the same vein, Lord Edmund-Davies said in *Stock v Frank Jones (Tipton) Ltd* [1978] 1 All ER 948 at p 954; [1978] 1 WLR 231 at p 238:

> ... dislike of the effect of a statute has never been an accepted reason for departing from its plain language. Holt CJ said nearly three centuries ago: 'An Act of Parliament can do no wrong, though it may do several things that look pretty odd' (*City of London v Wood* (1701) 12 Mod Rep 669 at p 687). Accordingly, even if one regarded the policy implicit in [the Act concerned] as open to criticism, [if] the statutory language is clear beyond doubt ... [it] must prevail.

It is germane to set out in extenso s 7(3)(i)(d) of the CLA, and it is as follows:

> The damages which the party who shall be liable under subsection (1) to pay to the party for whom and for whose benefit the action is brought shall, subject to this section, be such as will compensate the party for whom and for whose benefit the action is brought for any loss of support suffered together with any reasonable expenses incurred as a result of the wrongful act, neglect or default of the party liable under subsection (1):
>
> Provided that —
>
> (i) in assessing the damages there shall not be taken into account—
>
> ...
>
> (d) any sum which has been or will or may be paid under any written law relating to the payment of any benefit or compensation whatsoever, in respect of the death;

The sessions judge must have felt it was unpalatable to construe proviso (i)(d) of s 7(3) of the CLA in its plain language, for it would give rise to only one conclusion and it is this: compensation under the WCA will not bar a dependency claim under s 7 of the CLA, in respect of loss of support and damages for bereavement under s 7(3A) of the CLA nor will such compensation be said to be deductible. For the foregoing reasons, I allow the appeal on the preliminary objection with costs and the case is remitted to the sessions court for the trial of the main action. For expediency, the case should be mentioned before the Sessions Court, Johor Bahru on 21 March 1995.

Order accordingly.

Reported by Isabel Liong